

EXHIBIT 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE RICHARD C. DARWIN, JUDGE
DEPARTMENT 9

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PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.) COURT No. 21007774
)
DAVID MICHAEL BARBER,) Pages 001-009
)
Defendant.) Motion to Detain
) Without Bail
)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, AUGUST 13, 2021

A P P E A R A N C E S:

FOR THE PEOPLE:

CHESA BOUDIN, DISTRICT ATTORNEY
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SAN FRANCISCO, CA 94103
BY: Evanthia Pappas, Assistant District Attorney

FOR THE DEFENDANT:

MANOHAR RAJU, PUBLIC DEFENDER
555 SEVENTH STREET
SAN FRANCISCO, CA 94103
BY: Christopher Garcia, Deputy Public Defender
(Appearing via Zoom)

REPORTED BY: DIANE WILSON, CSR NO 8557

1 FRIDAY, AUGUST 13, 2021 - MORNING SESSION

2 BEFORE THE HONORABLE RICHARD C. DARWIN, JUDGE

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4 THE COURT: Okay. Let's go on the record on Line 22, David
5 Barber.

6 Appearances, please, first by the People.

7 MS. PAPPAS: Evanthia Pappas for the People. I am
8 providing a card to the clerk.

9 MR. GARCIA: (Appearing via Zoom) Good morning, Your
10 Honor.

11 Christopher Garcia, Public Defender's office. I'm
12 appearing by Zoom for Mr. Barber. He is present; he's in
13 custody.

14 THE COURT: Mr. Barber is present in the courtroom. He's
15 in custody. We're on the calendar today --

16 Good morning, sir.

17 THE DEFENDANT: Good morning, sir.

18 THE COURT: -- for the People's motion to detain the
19 defendant without bail. I read the motion. I received an
20 opposition today, which I have reviewed. I understand -- I
21 have a pretty good sense of both sides.

22 Ms. Pappas, if you'd like to briefly summarize your
23 position and then respond to anything that was in that
24 opposition, if you feel it appropriate?

25 MS. PAPPAS: So, Your Honor, as mentioned two days ago at
26 the time of arraignment and in the People's detention motion,
27 we're concerned about the public safety and the safety of the
28 victim in this matter. Not only did he assault her --

1 THE COURT: Yeah, use the microphone anyway. It helps the
2 court reporter.

3 MS. PAPPAS: I'm used to appearing on Zoom.

4 So, at the time of this incident, he suddenly punched his
5 girlfriend in the face with a closed fist in a car while she
6 was trying to break up with him; and after that, he strangled
7 her and threatened to kill her in the process. She was able to
8 get away, and he followed her.

9 This is the big concern the People have, is that he
10 followed her several streets over to her brother's place, where
11 she was seeking safety. And a witness -- an independent
12 witness sees him coming after her, and she has to get back in
13 her car and she's backed into a one-way exit area. So, this is
14 of concern to the People. We mentioned it two days ago.

15 Their motion -- if I could comment on Defense Counsel's
16 motion?

17 THE COURT: Yeah.

18 MS. PAPPAS: I read the letters. The letters, you know,
19 are from family members and friends dating back to when he was
20 a child. There's nothing depositive in there that gives me any
21 -- gives any explanation, other than the statement, "He is
22 peaceful." These facts would belie that logic.

23 And the letter that was e-mailed -- looks like there is a
24 family member from law enforcement in there, and that
25 particular individual -- I believe it might be Mr. Barber's
26 mother indicates that --

27 THE COURT: Brother.

28 MS. PAPPAS: Brother, excuse me, indicates that, you know,

1 bail and, you know, detention and these sorts of things are
2 only about ensuring somebody's appearance in court. I really
3 want to emphasize that there's a public safety issue here that
4 overrides and is the primary concern that the People have.

5 So, that's -- with that, we would submit.

6 THE COURT: Okay.

7 All right. Mr. Garcia, briefly, understanding that I have
8 reviewed your opposition.

9 MR. GARCIA: (Appearing via Zoom) Yes, Your Honor.

10 I understand the concern. I understand the seriousness of
11 the allegations here. I think by all accounts, even if we were
12 to accept these allegations as true, it is an isolated
13 incident. The victim in this case told the officers that there
14 were no previous domestic violence incidents between the two.
15 The officers then did an independent check in their system and
16 did not find any reported incidents between the two.

17 Going beyond that, looking at Mr. Barber's history --
18 criminal history, there are no convictions for any violent
19 offenses at all. The most recent is from 2009 many, many years
20 ago for a drug possession case.

21 So I don't think from what we have here, looking at his
22 history; looking at all of the support he has in terms of the
23 letters that were provided; considering that he has an
24 independent address away from this alleged victim; that there
25 is now a criminal protective order that everyone from his
26 family that I've spoken to believes he will comply with; in my
27 conversations with Mr. Barber, he said he will comply with
28 them; I think there are sufficient reasons to have Mr. Barber

1 released from custody with conditions.

2 He can be on home detention; he can be on G.P.S. These are
3 options with what's available to him.

4 His family will help keep him in check. I spoke with his
5 brother personally yesterday, the one where I forwarded the
6 e-mail to you today. He is obviously concerned about David,
7 his brother, and he has a very extensive law enforcement
8 background. He does not believe that David will -- will be
9 away from any court orders or do anything to mess up any
10 opportunities given to him, and he said if he does, that his
11 brother will personally seek him out and bring him back to
12 court himself. Though that's not likely, his brother said he
13 would do that.

14 So I think David, the defendant in this case, has a lot of
15 support among his family, among his friends to keep him in
16 check, and I think there are reasons why he should be released,
17 given his lack of criminal history, his lack of violence, and
18 his support.

19 THE COURT: Okay. Thank you.

20 Submitted?

21 MS. PAPPAS: Submitted.

22 THE COURT: I do have lots of concerns based on the
23 allegations in the Complaint. In the big picture of things
24 though, I don't believe there's clear and convincing evidence
25 that there are no conditions of release that would ensure the
26 safety of the public and the safety of the victim, so I'm not
27 going to detain without bail. And I'll just kind of tick off
28 the reasons -- not tick off, give you some explanation of my

1 reasoning here so you'll have a full understanding of it.

2 The incident as alleged was a violent one, no question.

3 But I was -- but what I found significant was the fact that the
4 defendant has no prior violent felony convictions or violent
5 crimes of any kind, no bench warrant history; he's employed; he
6 has his own apartment; there was no -- by the victim's report
7 to police, there were no prior documented or undocumented
8 incidents of domestic violence between the two of them with
9 Mr. Barber. All those create a picture here that makes me
10 satisfied that there's no pattern of violence -- that there's
11 no pattern of domestic violence or harassment or no pattern of
12 refusal to comply with court orders or show up for court.

13 The incident itself will be litigated and it will have a
14 resolution, and if he's found guilty of it, there will be an
15 adequate punishment. But in terms of whether he can be safely
16 released, the lack of a criminal history of any sort of -- a
17 lack of violent convictions or reported or unreported domestic
18 violence incidents gives me some satisfaction that he can be
19 released on some fairly restrictive conditions without
20 jeopardizing the safety of the public or the victim.

21 I will be releasing him with A.C.M., electronic monitoring,
22 home detention solely with an exception for employment. When
23 he's not at work, he will have to remain in the confines of his
24 home.

25 MR. GARCIA: I'd ask for a medical exception as well, if he
26 needs to. I know he has some injuries from this event as well.

27 THE COURT: Okay.

28 THE DEFENDANT: Your Honor?

1 MR. GARCIA: And one thing I forgot to mention for the
2 Court, Mr. Barber's mother is on Zoom here watching -- her name
3 is Antoinette -- in support of him.

4 THE COURT: Mr. Barber was raising his hand, Mr. Garcia, to
5 say something. I want to make sure you've spoken to him about
6 anything he may want to say.

7 MR. GARCIA: If I can -- are any of my colleagues in the
8 courtroom?

9 THE COURT: Mr. Fleischaker is here.

10 So this will be a coordinated release. No weapons, home
11 detention, and abide by the criminal protective order, which
12 I've already signed.

13 THE DEFENDANT: Your Honor?

14 THE COURT: All right. I think we have a preliminary
15 hearing scheduled in this court on August 24th and a hearing on
16 August 23rd for receipt of subpoenaed records. We'll confirm
17 both of those dates. I'll order the defendant to be present.

18 MR. GARCIA: I'd ask that his appearance be waived on the
19 23rd for the receipt of records.

20 THE COURT: Any objection to a waiver?

21 MS. PAPPAS: No, Your Honor.

22 THE COURT: All right.

23 Defendant's appearance will be waived on the 23rd. He was
24 ordered present on the 24th for a preliminary hearing.

25 Again, I am not, in any way, minimizing the alleged conduct
26 here, but with respect to whether all the facts and
27 circumstances support detention without bail for this incident,
28 I just find that there are conditions of release that would

1 adequately protect the victim. I know the People disagree, but
2 that's ultimately the conclusion that I reached after giving it
3 quite a bit of thought.

4 Okay. Anything else on this matter?

5 MS. PAPPAS: No, Your Honor.

6 THE COURT: We don't need to stay on the record. We're
7 done with the C.P.O. already.

8 Thank you.

9 (Whereupon these proceedings concluded)

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1 State of California)
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2 County of San Francisco)

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5 I, Diane Wilson, Official Reporter for the Superior Court
6 of California, County of San Francisco, do hereby certify:

7 That I was present at the time of the above proceedings;

8 That I took down in machine shorthand notes all proceedings
9 had and testimony given;

10 That I thereafter transcribed said shorthand notes with the
11 aid of a computer;

12 That the above and foregoing Pages 1 through 9,
13 inclusive, is a full, true, and correct transcription of said
14 shorthand notes, and a full, true, and correct transcript of
15 all proceedings had and testimony taken on August 13, 2021;

16 That I am not a party to the action or related to a party
17 or counsel;

18 That I have no financial or other interest in the outcome
19 of the action.

20
21
22 DATED: August 13, 2021

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25 _____
Diane Wilson, CSR No. 8557
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